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BANK OF AMERICA, N.A.

8
9
10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 GENGCAI TIAN,

13 Plaintiff,

14 vs.
15

16 BANK OF AMERICA, N.A., and
DOES 1 through 10, inclusive ,

17 Defendants.
18
19

Case No. 2:24-cv-00602-MCS (PDx)

Assigned for All Purposes To:
Hon. Mark C. Scarsi
United States District Court Judge
350 1st Street, Ctrm 7C

Hon. Patricia Donahue
United States Magistrate Judge

PROTECTIVE ORDER

20 1. INTRODUCTION

21 1.1 PURPOSES AND LIMITATIONS

22 Discovery in this action is likely to involve production of confidential,
23 proprietary, or private information for which special protection from public
24 disclosure and from use for any purpose other than prosecuting this litigation may
25 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
26 enter the following Stipulated Protective Order. The parties acknowledge that this
27 Order does not confer blanket protections on all disclosures or responses to
28 discovery and that the protection it affords from public disclosure and use extends

1 only to the limited information or items that are entitled to confidential treatment
2 under the applicable legal principles. The parties further acknowledge, as set forth
3 in Section 12.3, below, that this Stipulated Protective Order does not entitle them to
4 file confidential information under seal; Civil Local Rule 79-5 sets forth the
5 procedures that must be followed and the standards that will be applied when a party
6 seeks permission from the court to file material under seal.

7 1.2 GOOD CAUSE STATEMENT

8 This action is likely to involve the disclosure and discovery of personal
9 financial information and other private personal identifying information of plaintiff,
10 Gengcai Tian, including but not limited to bank account records, telephone records
11 and social security numbers, as well as defendant Bank of America, N.A.'s
12 ("BofA") trade secrets, valuable research, development, commercial, financial,
13 technical and/or proprietary information for which special protection from public
14 disclosure and from use for any purpose other than prosecution of this action is
15 warranted. Such confidential and proprietary materials and information consist of,
16 among other things, confidential business or financial information, information
17 regarding confidential business practices, or other confidential research,
18 development, or commercial information (including information implicating privacy
19 rights of third parties), information otherwise generally unavailable to the public, or
20 which may be privileged or otherwise protected from disclosure under state or
21 federal statutes, court rules, case decisions, or common law, as well as any
22 information copied or extracted therefrom, plus testimony, conversations, or
23 presentations by Parties or counsel to or in court or in other settings that might
24 reveal information, the disclosure of which would, in the good faith judgment of the
25 Producing Party (defined below) be detrimental to that Party and/or to the conduct
26 of that Party's business or the business of any of that Party's customers or clients.
27 Accordingly, to expedite the flow of information, to facilitate the prompt resolution
28 of disputes over confidentiality of discovery materials, to adequately protect

1 information the parties are entitled to keep confidential, to ensure that the parties are
2 permitted reasonable necessary uses of such material in preparation for and in the
3 conduct of trial, to address their handling at the end of the litigation, and serve the
4 ends of justice, a protective order for such information is justified in this matter. It is
5 the intent of the parties that information will not be designated as confidential for
6 tactical reasons and that nothing be so designated without a good faith belief that
7 it has been maintained in a confidential, non-public manner, and there is good cause
8 why it should not be part of the public record of this case.

9
10 2. DEFINITIONS

11 2.1 Action: This pending lawsuit.

12 2.2 Challenging Party: a Party or Non-Party that challenges the
13 designation of information or items under this Order.

14 2.3 "CONFIDENTIAL" Information or Items: information (regardless of
15 how it is generated, stored or maintained) or tangible things that qualify for
16 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
17 the Good Cause Statement.

18 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
19 their support staff).

20 2.5 Designating Party: a Party or Non-Party that designates information or
21 items that it produces in disclosures or in responses to discovery as
22 "CONFIDENTIAL."

23 2.6 Disclosure or Discovery Material: all items or information, regardless
24 of the medium or manner in which it is generated, stored, or maintained (including,
25 among other things, testimony, transcripts, and tangible things), that are produced or
26 generated in disclosures or responses to discovery in this matter.

27 2.7 Expert: a person with specialized knowledge or experience in a matter
28 pertinent to the litigation who has been retained by a Party or its counsel to serve as

1 an expert witness or as a consultant in this Action.

2 2.8 House Counsel: attorneys who are employees of a party to this Action.
3 House Counsel does not include Outside Counsel of Record or any other outside
4 counsel.

5 2.9 Non-Party: any natural person, partnership, corporation, association, or
6 other legal entity not named as a Party to this action.

7 2.10 Outside Counsel of Record: attorneys who are not employees of a
8 party to this Action but are retained to represent or advise a party to this Action and
9 have appeared in this Action on behalf of that party or are affiliated with a law firm
10 which has appeared on behalf of that party, and includes support staff.

11 2.11 Party: any party to this Action, including all of its officers, directors,
12 employees, consultants, retained experts, and Outside Counsel of Record (and their
13 support staffs).

14 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
15 Discovery Material in this Action.

16 2.13 Professional Vendors: persons or entities that provide litigation
17 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
18 demonstrations, and organizing, storing, or retrieving data in any form or medium)
19 and their employees and subcontractors.

20 2.14 Protected Material: any Disclosure or Discovery Material that is
21 designated as "CONFIDENTIAL."

22 2.15 Receiving Party: a Party that receives Disclosure or Discovery
23 Material from a Producing Party.

24
25 3. SCOPE

26 The protections conferred by this Stipulation and Order cover not only
27 Protected Material (as defined above), but also (1) any information copied or
28 extracted from Protected Material; (2) all copies, excerpts, summaries, or

1 compilations of Protected Material; and (3) any testimony, conversations, or
2 presentations by Parties or their Counsel that might reveal Protected Material.

3 Any use of Protected Material at trial will be governed by the orders of the
4 trial judge. This Order does not govern the use of Protected Material at trial.

6 4. DURATION

7 Even after final disposition of this litigation, the confidentiality
8 obligations imposed by this Order will remain in effect until a Designating Party
9 agrees otherwise in writing or a court order otherwise directs. Final disposition will
10 be deemed to be the later of (1) dismissal of all claims and defenses in this Action,
11 with or without prejudice; and (2) final judgment herein after the completion and
12 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
13 including the time limits for filing any motions or applications for extension of time
14 pursuant to applicable law.

16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Material for Protection.
18 Each Party or Non-Party that designates information or items for protection under
19 this Order must take care to limit any such designation to specific material that
20 qualifies under the appropriate standards. The Designating Party must designate for
21 protection only those parts of material, documents, items, or oral or written
22 communications that qualify so that other portions of the material, documents,
23 items, or communications for which protection is not warranted are not swept
24 unjustifiably within the ambit of this Order.

25 Mass, indiscriminate, or routinized designations are prohibited. Designations
26 that are shown to be clearly unjustified or that have been made for an improper
27 purpose (e.g., to unnecessarily encumber the case development process or to impose
28 unnecessary expenses and burdens on other parties) may expose the Designating

1 Party to sanctions.

2 If it comes to a Designating Party's attention that information or items
3 that it designated for protection do not qualify for protection, that Designating Party
4 must promptly notify all other Parties that it is withdrawing the inapplicable
5 designation.

6 5.2 Manner and Timing of Designations. Except as otherwise provided in
7 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
8 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
9 under this Order must be clearly so designated before the material is disclosed or
10 produced.

11 Designation in conformity with this Order requires:

12 (a) for information in documentary form (e.g., paper or electronic documents,
13 but excluding transcripts of depositions or other pretrial or trial proceedings), that
14 the Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter
15 "CONFIDENTIAL legend"), to each page that contains protected material. If only a
16 portion or portions of the material on a page qualifies for protection, the Producing
17 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
18 markings in the margins).

19 A Party or Non-Party that makes original documents available for inspection
20 need not designate them for protection until after the inspecting Party has indicated
21 which documents it would like copied and produced. During the inspection and
22 before the designation, all of the material made available for inspection will be
23 deemed "CONFIDENTIAL." After the inspecting Party has identified the
24 documents it wants copied and produced, the Producing Party must determine which
25 documents, or portions thereof, qualify for protection under this Order. Then, before
26 producing the specified documents, the Producing Party must affix the
27 "CONFIDENTIAL legend" to each page that contains Protected Material. If only a
28 portion or portions of the material on a page qualifies for protection, the Producing

1 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
2 markings in the margins).

3 (b) for testimony given in depositions that the Designating Party identify the
4 Disclosure or Discovery Material on the record, before the close of the deposition all
5 protected testimony.

6 (c) for information produced in some form other than documentary and for
7 any other tangible items, that the Producing Party affix in a prominent place on the
8 exterior of the container or containers in which the information is stored the legend
9 “CONFIDENTIAL.” If only a portion or portions of the information warrants
10 protection, the Producing Party, to the extent practicable, will identify the protected
11 portion(s).

12 5.3 Inadvertent Failures to Designate Discovery Materials as Confidential
13 Information. The unintentional failure by a Producing Party to designate Discovery
14 Material with the correct “CONFIDENTIAL” designation shall not waive any such
15 designation. If the Producing Party notifies all Receiving Parties of an unintentional
16 failure to designate materials as “CONFIDENTIAL,” the Producing Party shall
17 reproduce the Discovery Material with the correct “CONFIDENTIAL” designation
18 within ten (10) business days of the Producing Party’s notification to the Receiving
19 Party. Upon receiving the Discovery Material with the correct “CONFIDENTIAL”
20 designation, the Receiving Parties shall destroy all Discovery Material that was
21 identified as incorrectly designated. A Receiving Party shall not be in breach of this
22 Stipulation and Order for any use of such unintentionally non-designated or
23 inadvertently mis-designated Discovery Material before the Receiving Party
24 receives notice of the inadvertent failure to designate. Once a Receiving Party has
25 received notice of the unintentional failure to designate pursuant to this provision,
26 the Receiving Party shall treat such Discovery Material at the appropriately
27 designated level pursuant to the terms of this Stipulation and Order.

28 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

1 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
2 designation of confidentiality at any time that is consistent with the Court's
3 Scheduling Order.

4 6.2 Meet and Confer. The Challenging Party will initiate the dispute
5 resolution process (and, if necessary, file a discovery motion) under Local Rule 37.1
6 et seq.

7 6.3 The burden of persuasion in any such challenge proceeding will be on
8 the Designating Party. Frivolous challenges, and those made for an improper
9 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
10 parties) may expose the Challenging Party to sanctions. Unless the Designating
11 Party has waived or withdrawn the confidentiality designation, all parties will
12 continue to afford the material in question the level of protection to which it is
13 entitled under the Producing Party's designation until the Court rules on the
14 challenge.

15
16 7. ACCESS TO AND USE OF PROTECTED MATERIAL

17 7.1 Basic Principles. A Receiving Party may use Protected Material that is
18 disclosed or produced by another Party or by a Non-Party in connection with this
19 Action only for prosecuting, defending, or attempting to settle this Action. Such
20 Protected Material may be disclosed only to the categories of persons and under the
21 conditions described in this Order. When the Action has been terminated, a
22 Receiving Party must comply with the provisions of section 13 below (FINAL
23 DISPOSITION).

24 Protected Material must be stored and maintained by a Receiving Party at a
25 location and in a secure manner that ensures that access is limited to the persons
26 authorized under this Order.

27 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
28 otherwise ordered by the court or permitted in writing by the Designating Party, a

1 Receiving Party may disclose any information or item designated

2 “CONFIDENTIAL” only to:

3 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well
4 as employees of said Outside Counsel of Record to whom it is reasonably necessary
5 to disclose the information for this Action;

6 (b) the officers, directors, and employees (including House Counsel) of the
7 Receiving Party to whom disclosure is reasonably necessary for this Action;

8 (c) Experts (as defined in this Order) of the Receiving Party to whom
9 disclosure is reasonably necessary for this Action and who have signed the
10 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11 (d) the Court and its personnel and the jury;

12 (e) court reporters and their staff;

13 (f) professional jury or trial consultants, mock jurors, and Professional
14 Vendors to whom disclosure is reasonably necessary for this Action and who have
15 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

16 (g) the author or recipient of a document containing the information or a
17 custodian or other person who otherwise possessed or knew the information;

18 (h) during their depositions, witnesses ,and attorneys for witnesses, in the
19 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
20 requests that the witness sign the form attached as Exhibit A hereto; and (2) they
21 will not be permitted to keep any confidential information unless they sign the
22 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
23 agreed by the Designating Party or ordered by the court. Pages of transcribed
24 deposition testimony or exhibits to depositions that reveal Protected Material may
25 be separately bound by the court reporter and may not be disclosed to anyone except
26 as permitted under this Stipulated Protective Order; and

27 (i) any mediator or settlement officer, and their supporting personnel,
28 mutually agreed upon by any of the parties engaged in settlement discussions.

1
2 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
3 PRODUCED IN OTHER LITIGATION

4 If a Party is served with a subpoena or a court order issued in other litigation
5 that compels disclosure of any information or items designated in this Action as
6 “CONFIDENTIAL,” that Party must:

7 (a) promptly notify in writing the Designating Party. Such notification will
8 include a copy of the subpoena or court order;

9 (b) promptly notify in writing the party who caused the subpoena or order to
10 issue in the other litigation that some or all of the material covered by the subpoena
11 or order is subject to this Protective Order. Such notification will include a copy of
12 this Stipulated Protective Order; and

13 (c) cooperate with respect to all reasonable procedures sought to be pursued
14 by the Designating Party whose Protected Material may be affected.

15 If the Designating Party timely seeks a protective order, the Party served with
16 the subpoena or court order will not produce any information designated in this
17 action as “CONFIDENTIAL” before a determination by the court from which the
18 subpoena or order issued, unless the Party has obtained the Designating Party’s
19 permission. The Designating Party will bear the burden and expense of seeking
20 protection in that court of its confidential material and nothing in these provisions
21 should be construed as authorizing or encouraging a Receiving Party in this Action
22 to disobey a lawful directive from another court.

23
24 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
25 PRODUCED IN THIS LITIGATION

26 (a) The terms of this Order are applicable to information produced by a Non-
27 Party in this Action and designated as “CONFIDENTIAL.” Such information
28 produced by Non-Parties in connection with this litigation is protected by the

1 remedies and relief provided by this Order. Nothing in these provisions should be
2 construed as prohibiting a Non-Party from seeking additional protections.

3 (b) In the event that a Party is required, by a valid discovery request, to
4 produce a Non-Party's confidential information in its possession, and the Party is
5 subject to an agreement with the Non-Party not to produce the Non-Party's
6 confidential information, then the Party will:

7 (1) promptly notify in writing the Requesting Party and the Non-Party that
8 some or all of the information requested is subject to a confidentiality agreement
9 with a Non-Party;

10 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
11 Order in this Action, the relevant discovery request(s), and a reasonably specific
12 description of the information requested; and

13 (3) make the information requested available for inspection by the Non-
14 Party, if requested.

15 (c) If the Non-Party fails to seek a protective order from this court within 14
16 days of receiving the notice and accompanying information, the Receiving Party
17 may produce the Non-Party's confidential information responsive to the discovery
18 request. If the Non-Party timely seeks a protective order, the Receiving Party will
19 not produce any information in its possession or control that is subject to the
20 confidentiality agreement with the Non-Party before a determination by the court.
21 Absent a court order to the contrary, the Non-Party will bear the burden and expense
22 of seeking protection in this court of its Protected Material.

23 24 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

25 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
26 Protected Material to any person or in any circumstance not authorized under this
27 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
28 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts

1 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
2 persons to whom unauthorized disclosures were made of all the terms of this Order,
3 and (d) request such person or persons to execute the “Acknowledgment and
4 Agreement to Be Bound” that is attached hereto as Exhibit A.

5
6 11. INADVERTENT PRODUCTION OF PRIVILEGED OR
7 OTHERWISE PROTECTED MATERIAL

8 When a Producing Party gives notice to Receiving Parties that certain
9 inadvertently produced material is subject to a claim of privilege or other protection,
10 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
11 Procedure 26(b)(5)(B). This provision is not intended to modify whatever
12 procedure may be established in an e-discovery order that provides for production
13 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and
14 (e), insofar as the parties reach an agreement on the effect of disclosure of a
15 communication or information covered by the attorney-client privilege or work
16 product protection, the parties may incorporate their agreement in the stipulated
17 protective order submitted to the court.

18
19 12. MISCELLANEOUS

20 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
21 person to seek its modification by the Court in the future.

22 12.2 Right to Assert Other Objections. By stipulating to the entry of this
23 Protective Order no Party waives any right it otherwise would have to object to
24 disclosing or producing any information or item on any ground not addressed in this
25 Stipulated Protective Order. Similarly, no Party waives any right to object on any
26 ground to use in evidence of any of the material covered by this Protective Order.

27 12.3 Filing Protected Material. A Party that seeks to file under seal any
28 Protected Material must comply with Civil Local Rule 79-5. Protected Material may

1 only be filed under seal pursuant to a court order authorizing the sealing of the
2 specific Protected Material at issue. If a Party's request to file Protected Material
3 under seal is denied by the court, then the Receiving Party may file the information
4 in the public record unless otherwise instructed by the court.

5
6 13. FINAL DISPOSITION

7 After the final disposition of this Action, as defined in paragraph 4, within 60
8 days of a written request by the Designating Party, each Receiving Party must return
9 all Protected Material to the Producing Party or destroy such material. As used in
10 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
11 summaries, and any other format reproducing or capturing any of the Protected
12 Material. Whether the Protected Material is returned or destroyed, the Receiving
13 Party must submit a written certification to the Producing Party (and, if not the same
14 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
15 (by category, where appropriate) all the Protected Material that was returned or
16 destroyed and (2) affirms that the Receiving Party has not retained any copies,
17 abstracts, compilations, summaries or any other format reproducing or capturing any
18 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
19 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
20 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
21 reports, attorney work product, and consultant and expert work product, even if such
22 materials contain Protected Material. Any such archival copies that contain or
23 constitute Protected Material remain subject to this Protective Order as set forth in
24 Section 4 (DURATION).

25
26 14. Any willful violation of this Order may be punished by civil or criminal
27 contempt proceedings, financial or evidentiary sanctions, reference to disciplinary
28 authorities, or other appropriate action at the discretion of the Court.

1
2 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

3
4 DATED: June 4, 2024

GOLDEN & CARDONA-LOYA, LLP

5
6
7 By: /s/ Jeremy S. Golden
JEREMY S. GOLDEN

8
9 Attorneys for Plaintiff GENGCAI TIAN

10 DATED: June 4, 2024

SEVERSON & WERSON
A Professional Corporation

11
12
13 By: /s/ Austin B. Kenney
AUSTIN B. KENNEY

14
15 Attorneys for Defendant BANK OF
16 AMERICA, N.A.

17 **STATEMENT OF ATTESTATION**

18 Pursuant to Local Rule 5-4.3.4(a)(2)(i), I hereby attest that all other
19 signatories listed, and on whose behalf the filing is submitted, concur in the filing's
20 content and have authorized the filing.

21 By: /s/ Austin B. Kenney
AUSTIN B. KENNEY

22
23 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

24
25 DATED: June 05, 2024



26 HON. PATRICIA DONAHUE

27 United States Magistrate Judge
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Central District of California
on _____ in the case of **GENGCAI TIAN v. BANK OF
AMERICA, N.A., Case No. 2:24-cv-00602-MCS-PD**. I agree to comply with and
to be bound by all the terms of this Stipulated Protective Order and I understand
and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose
in any manner any information or item that is subject to this Stipulated Protective
Order to any person or entity except in strict compliance with the provisions of this
Order. I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action. I hereby appoint _____ [print or
type full name] of _____ [print or type full address
and telephone number] as my California agent for service of process in connection
with this action or any proceedings related to enforcement of this Stipulated
Protective Order.

1 Date: _____

2

3 City and State where sworn and signed: _____

4 Printed name: _____

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6 Signature: _____

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